



# *Legislative Background Brief*

*for the*  
*Economic Affairs Interim Committee*

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## **Workers' Compensation Court and Judge**

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House Joint Resolution No. 25 directed examination of various aspects of the workers' compensation system in Montana, including the structure of the workers' compensation court and whether a nonpolitical appointment of the workers' compensation judge is feasible or needed. This briefing paper will provide information on:

- the history of the workers' compensation court, including statutory changes in the court over time;
- the process of appointing workers' compensation judges;
- jurisdiction;
- possible legislative changes to the statutes; and
- a list of workers' compensation judges since inception.

### **History**

The 1975 Legislature created a workers' compensation court with one judge and provided that the judge had the authority to hold hearings, make final determinations of workers' compensation disputes, and determine and fix benefits that are to be paid. House Bill No. 100 in 1975 (chapter 537 of the Session Laws of 1975) contained a mix of administrative and judicial approaches, including the following provisions:

- proceedings are to comply with the Montana Administrative Procedure Act;
- an appeal of the workers' compensation judge's final decision is to be filed directly with the Supreme Court "in the manner provided by law for appeals from the district court in civil cases"; and
- the workers' compensation judge is not bound by common law and statutory rules of evidence. The 1987 Legislature amended this statement to say the judge "is bound" by common law and statutory rules of evidence.

Prior to creation of the workers' compensation court the Industrial Accident Board held administrative-style hearings regarding disputed workers' compensation claims. Judicial rules of evidence were not used but rather the Board adopted its own rules for hearings.

A 1980 analysis of the workers' compensation court by then workers' compensation judge William E. Hunt and Gregory A. Luinstra in the

*Montana Law Review* (vol. 41) commented on one major difference between district courts and the workers' compensation court: that in a workers' compensation hearing "hearsay" evidence is allowed. They noted: "The hearsay exception is particularly important in terms of medical evidence, which often takes the form of unsworn letters, reports, and other documents."

Over the years, processes have developed to make the workers' compensation court more judicial in demeanor, although one of the stated purposes of the Workers' Compensation Act in Title 39, chapter 71, MCA, is to have a system that is "primarily self-administering" and to that end "must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities" (39-71-105, MCA). Among the judicial approaches were:

- to create the workers' compensation court as a court of record (in 2007 in partial response to *Thompson v. State*, 2007 MT 185, 338 Mont. 511, 167 P.3d 867--see below);
- the right to compel attendance of persons to testify and other procedural issues enacted in 1987.

### **Appointment Process**

The Judicial Nomination Commission (four members appointed by the Governor, two appointed by the Supreme Court, and one judge chosen by fellow district judges) provides a list of at least three but not more than five potential nominees to the Governor when there is a vacancy or at the end of the workers' compensation judge's 6-year term. The Governor's appointment is subject to Senate confirmation. If the Governor does not appoint within 30 days of receiving the list, the Chief Justice is to make the appointment.

### **Jurisdiction**

The workers' compensation court has original jurisdiction over matters arising under the Workers' Compensation Act (including occupational disease claims) as well as disputes involving independent contractor exemptions and enforcement of the Department of Labor and Industry investigatory powers.

The court serves as an appellate court for cases over which the Department of Labor and Industry has original jurisdiction for regulatory matters, such as appeals from orders and determinations issued by its Employment Relations Division, assessments of penalties against uninsured employers, regulation of attorney fees, and nonpayment-related medical disputes between insurers and providers.

### **Possible Legislative Changes**

- *Missing Reference?* -- The statute creating the Judicial Nomination Commission (3-1-1001, MCA) does not mention as a function the nomination of a workers' compensation judge.

However, the workers' compensation judge is mentioned in 3-1-1010, MCA, regarding nominations to be submitted to the Governor or the Chief Justice. In addition, the statute creating the position of workers' compensation judge states that the Judicial Nomination Commission process established in Title 3, chapter 1, part 10, MCA, is to be followed for nominating a workers' compensation judge.

- *Clarification of Administrative vs. Judicial Nature* -- There are several issues here. One relates to the court being a court of limited jurisdiction. Another relates to the court initially not being a court of record. Both issues were part of a challenge in *Thompson v. State*, 2007 MT 185, 338 Mont. 511, 167 P.3d 867. For that case the Montana Supreme Court said the workers' compensation court as a court of limited jurisdiction could issue declaratory rulings on workers' compensation benefits but could not declare a statute unrelated to benefits unconstitutional. The high court also pointed out that when the workers' compensation court was created, there was no mention that the court was a court of record. The 2007 Legislature amended 3-1-102, MCA, to include the workers' compensation court as a court of record. The addition does not necessarily clear up the mix of administrative and judicial activities required of the workers' compensation court.
- *Appointment vs. Election* -- The appointment process through the Judicial Nomination Commission lends a political overtone to who becomes a workers' compensation judge, in part because the Judicial Nomination Commission's majority is appointed by the Governor and in part because the Governor appoints the judge. District court judges are elected, as are Supreme Court justices, although the Governor is assigned the duty of filling vacancies. The Supreme Court Chief Justice appoints the water court judge and associate water court judge, using nominations from the Judicial Nomination Commission. Direct election may or may not be more political but does not necessarily guarantee specific expertise in workers' compensation.

### **Workers' Compensation Court Judges**

7/1975 to 8/1981 (6 years) - The Honorable William E. Hunt

8/1981 to 9/1993 (12 years) - The Honorable Timothy W. Reardon

9/1993 to 9/2005 (12 years) - The Honorable Michael O. McCarter

9/2005 to present - The Honorable James Jeremiah Shea